**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN**

**FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929**

**OP.No. 11667 of 2003(L)**
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**PETITIONER:**
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**PRADEEP K.P., JR.OFFICER (H.R.)**
**V.S.N.L., ERNAKULAM, S/O. K.S. PALANIKUTTY,**
**KADUKKAPARAMBIL HOUSE,**
**CHITTISSERY, THRISSUR.**

**BY ADV. SRI.JOHNSON ABRAHAM,**
**SRI.VINCENT PIOUS,**
**SMT.RUBY P.PAULOSE,**
**SRI.S.GOPINATHAN,**
**SRINELSON ABRAHAM.**

**RESPONDENTS:**
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1. **VIDESH SANCHAR NIGAM LIMITED,**
**LOKMANYA VIDESH SANCHAR BHAVAN,**
**KASHINATH DHURU MARG, PRABHADEVI,**
**MUMBAI-400 028.**

2. **THE GENERAL MANAGER, (HR)**
**VIDESH SANCHAR NIGAM LIMITED,**
**LIKMANYA VIDESH SANCHAR BHAVAN,**
**KASHINATH DHURU MARG, PRABHADEVI,**
**MUMBAI-400 028.**

**BY ADV. SRI.E.K.NANDAKUMAR,**
**SRI.A.K.JAYASANKAR NAMBIAR,**
**SMT.PRIYA MANJOORAN.**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 03/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**O.P. NO. 11667/2003:**

## APPENDIX

**PETITIONER'S EXHIBITS:**

**EXT.P.1: COPY OF THE APPOINTMENT LETTER DTD. 25/09/1998 ISSUED BY THE RESPONDENT.**

**EXT.P.2: COPY OF THE MEMO OF APPRECIATION DTD. 13/08/1999.**

**EXT.P.3: COPY OF THE REPRESENTATION GIVEN TO THE RESPONDENT DTD. 24/11/2002.**

**EXT.P.4: COPY OF THE REPLY DTD. 24/01/2003 ISSUED BY THE RESPONDENT.**

**EXT.P.5: COPY OF THE LETTER REQUESTING FOR RULES & REGULATIONS.**

**EXT.P.6: COPY OF THE REPLY DTD. 24/02/03 ISSUED BY THE RESPONDENT.**

**RESPONDENT'S EXHIBITS:**

**EXT.R1.A: COPY OF THE SHAREHOLDING PATTERN OF THE RESPONDENT AS ON 23/05/2003.**

**EXT.R1.B: COPY OF THE ORDER DTD. 24/10/2002 DECLARING PLI FOR THE YEAR 2001-02.**

**EXT.R1.C: COPY OF THE NOTIFICATION DTD. 21/05/2001.**

**//TRUE COPY//**

**prv.**

**THOTTATHIL B. RADHAKRISHNAN, J.**

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**O.P.No.11667 of 2003-L**

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Dated this the 3rd day of August, 2007.

**JUDGMENT**

**“CR”**

1. The petitioner entered the service of the first respondent Videsh Sanchar Nigam Limited, hereinafter referred to as the "VSNL", as Junior Officer (HR) on 6-11-1998. He resigned from the service of the VSNL on 17-5-2002 since he was selected for appointment in another institution. Since he could not wait to give notice of his intention to leave the service of VSNL, he had to make payment in lieu of notice.

2. Ext.P1 offer of appointment, issued to the petitioner by VSNL, enumerated the different benefits which included "productivity linked incentive paid annually based on Company Performance" at Sl.No.9 among Other Benefits for Non-Executives, hereinafter referred to as “PLI”.

3. After resignation, the petitioner claimed that he was entitled to PLI for the financial year 2001-2002, i.e. during a period while he was in service. That request was rejected by the VSNL. Petitioner requested for a copy of the rules of bonus which governed. VSNL replied that those rules are for internal circulation only. Petitioner was informed that he is not entitled to the benefit of PLI as claimed, since 30th June of the succeeding financial year is a qualification for earning PLI for the prior financial year.

4. On the aforesaid premise, this writ petition is filed seeking a direction to pay PLI and to produce rules and regulations in respect of PLI and further, to quash the prescription in those rules and regulations that continuance of VSNL service as on the 30th June of the succeeding financial year is necessary to earn PLI.

5. Ext.R1(c) placed on record along with I.A.10514 of 2007

and taken on record, is the Performance Reward Scheme for VSNL employees. Clause 2.1 of that Scheme reads as follows:

> "2.1 This scheme shall be applicable to all Eligible Employees of the Company. Eligible Employee for this purpose would mean an "Employee" as defined under VSNL (Conduct, Discipline & Appeal) Rules, 1992 and who is continuing to be on the rolls of the Company at a given date, i.e. 30th June of the following financial year. Provided that in case an employee dying in harness, superannuating or ceasing to be on the rolls of the Company due to expiry of term of appointment, during the relevant financial year he/she shall be eligible for proportionate payment of PRS when due. Provided further in the interest of clarification that for the purpose of PRS Eligible Employee will not include casual worker, trainee, apprentice, consultant, deputationist and persons engaged on daily wages."

6. The aforesaid clause provides that an eligible employee, who is continuing on the rolls of the Company at a given date, i.e., 30th June of the following financial year, would be entitled to the benefit of that scheme. "Eligible employee" is defined with reference to the term

"employee" as defined in VSNL (Conduct, Discipline & Appeal) Rules, 1992, with the further condition that such an employee would be an eligible employee on condition that he continues on the rolls of the Company as on 30th June of the following financial year, as already noticed. That clause also provides that in case of an employee dying in harness, superannuating or ceasing to be on the rolls of the Company due to expiry of term of appointment, during the relevant financial year, such employee shall be eligible for proportionate payment of PRS when due.

7. The petitioner is not one who had superannuated or had ceased to be on the rolls of the Company due to the expiry of the term of appointment. He had resigned from the service of VSNL. Therefore, the short question that arises for consideration is as to whether the fixation of a condition that an employee of VSNL, to be an eligible employee of that Company for the purpose of getting the benefit of Ext.R1(c) scheme, should be on the rolls of the

Company on the 30th June of the succeeding financial year, is illegal, arbitrary or otherwise unconstitutional.

8. Ext.R1(c), when read as a whole, obviously, gives the impression that the intention was to meet the exigencies arising out of liberalisation of international communication sector to private bodies and the resultant importance of competition in the market. The VSNL, therefore, decided to motivate and "retain" the employees. This is apparent from the introduction to the Scheme, as stated in Ext.R1 (c). So much so, the primary concern of the Company was to ensure that employees who had been working with it and have thereby acquired expertise in its work, would continue to serve that institution. As it was absolutely essential for the VSNL to reach at a higher profitability, it devised Ext.R1(c) Scheme as a method to lure it well trained employees to continue in that employment and to motivate them to higher profitability for the Company and greater customer satisfaction. Such employees who

continued to express their continuance with VSNL, would gain certain incentives. The earning of these incentives would depend upon the profit made by VSNL during a particular financial year. That would, necessarily, depend upon the profit and loss account in the balance sheet of VSNL, as regards that particular financial year. On that being assessed, the rate at which performance rewards could be granted as could be decided by VSNL. The above objective is to motivate the employees who contribute for the higher profitability to VSNL and also to ensure that such employees continue in the service. The intention was to ensure that the employees do not wither away to join other sectors. In a liberalised economy, including the liberalised market of international communication, which includes competitive element of private bodies in the sector, VSNL cannot be found fault with for making prescriptions that would provide incentives based on productivity performance, by making availability of such an incentive dependent upon the

employee continuing to serve the institution, the VSNL. At any rate, this is a matter not regulated by any statutory provision and entirely within the commercial wisdom of an organization working in the commercial sector, as well. So much so, the fixation of a condition that the employee should continue to be on the rolls of the Company as on the 30th June of the succeeding financial year for the purpose of availing the benefit of PLI is not illegal, irrational, arbitrary or otherwise unconstitutional. Nor could it be treated as unjust and unreasonable even in the realm of labour laws. This is all the more so because, what is being granted as a performance reward is not given under any statutory compulsion. There is no infringement of any of the fundamental rights of the petitioner, in terms of Part III of the Constitution, even if VSNL is a Government Company.

9. For the aforesaid reasons, the challenge to the prescription in Ext.R1(c) that an employee of VSNL, to be

an eligible employee for the purpose of that scheme has to be continuing on the rolls of the Company at the given date of 30th June of the following financial year, fails.

10. In the result, the writ petition is dismissed. No costs.

**THOTTATHIL B. RADHAKRISHNAN,**
**JUDGE.**

Sha/-

**THOTTATHIL B. RADHAKRISHNAN, J.**

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**JUDGMENT**

**Dated: 3rd August, 2007.**